

**CONTRACT FOR**

[                    ]

**REF: [    ]**

**DATED:**

**THIS CONTRACT** is dated

**BETWEEN**

- (1) **National Forest Company** of Enterprise Glade, Bath Yard, Moira, Swadlincote, Derbyshire DE12 6BA (the “**Customer**”); and
- (2) *[insert full name of supplier]* of *[insert full address]* or if registered company insert the following *[registered in England and Wales under number [insert company number] whose registered office is [insert address]]* (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

**BACKGROUND**

- a) The Customer requires the services set out in Schedule 1.
- b) The Customer has awarded this contract for the services to the Supplier and the Supplier agrees to provide the services in accordance with the terms of the contract.

**AGREED TERMS**

**1 Definitions and Interpretation**

- 1.1 In the Contract, unless the context requires otherwise, the following terms shall have the meanings given to them below:

**Approval**: the prior written consent of the Customer.

**Customer Website**: [www.nationalforest.org](http://www.nationalforest.org)

**Contract Term**: the period from the Commencement Date to the Expiry Date.

**Contracting Authority**: an organisation defined as a contracting authority in Regulation 3 of the Public Contract Regulations 2006.

**Data Protection Legislation**: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**Data Protection Impact Assessment** : an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer**’ take the meaning given in the GDPR.

**Data Loss Event** : any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Subject Request** : a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018** : Data Protection Act 2018

**GDPR** : the General Data Protection Regulation (*Regulation (EU) 2016/679*)

**Default**: a breach by the Supplier or Staff of its obligations under the Contract or any other default, negligence or negligent statement in connection with the Contract.

**Dispute Resolution Procedure**: the dispute resolution procedure set out in Clause 20.

**Force Majeure**: any cause affecting the performance by a Party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, its Staff or any other failure in the Supplier's supply chain.

**Fraud** : any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Customer or any other Contracting Authority.

**Good Industry Practice**: standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under similar circumstances.

**Goods**: all products, documents, and materials developed by the Supplier or its agents, Sub-contractors, consultants, suppliers and Staff in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Intellectual Property Rights**: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**IP Materials**: all Intellectual Property Rights which are:

- (a) furnished to or made available to the Supplier by or on behalf of the Customer; or
- (b) created by the Supplier or Staff in the course of providing the Services or exclusively for the purpose of providing the Services.

**Joint Controllers**: where two or more Controllers jointly determine the purposes and means of processing

**LED** : Law Enforcement Directive (*Directive (EU) 2016/680*)

**Price**: the price for the Services set out in Schedule 2.

**Protective Measures** : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).

**Replacement Supplier'**: any third party supplier of services appointed by the Customer to replace the Supplier.

**Staff**: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-contractors who are engaged in providing the Services from time to time.

**Sub-contract**: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**Sub-contractor**: third parties which enter into a Sub-contract with the Supplier.

**Sub-processor** : any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

**Valid Invoice**: an invoice containing the information set out in Clause 3.3.

**VAT**: Value Added Tax.

**Working Day**: Monday to Friday excluding any public holidays in England and Wales.

- 1.2 The interpretation and construction of the Contract is subject to the following provisions:
- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - (b) words importing the masculine include the feminine and the neuter;
  - (c) reference to any statutory provision, enactment, order, regulation or other similar instrument are construed as a reference to the statutory provision enactment, order regulation or instrument (including any instrument of the European Union) as amended, replaced, consolidated or re-enacted from time to time, and include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
  - (d) reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - (e) the headings are inserted for ease of reference only and do not affect the interpretation or construction of the Contract;

- (f) references to the Services include references to the Goods;
- (g) references to Clauses and Schedules are to clauses and schedules of the Contract; and
- (h) the Schedules form part of the Contract and have effect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

## **2 Contract and Contract Term**

- 2.1 The Supplier shall provide the Customer with the services set out in Schedule 1 (the “**Services**”) in accordance with the terms and conditions of the Contract.
- 2.2 The Contract is effective on [*insert date*] (the “**Commencement Date**”) and ends on [*insert date*] (the “**Expiry Date**”) unless terminated early or extended in accordance with the Contract.

## **3 Price and Payment**

- 3.1 In consideration of the Supplier providing the Services in accordance with the Contract, the Customer shall pay the Price to the Supplier.
- 3.2 The Customer shall:
  - (a) provide the Supplier with a purchase order number (“**PO Number**”); and
  - (b) pay all undisputed sums due to the Supplier within 30 days of receipt of a Valid Invoice.
- 3.3 A Valid Invoice shall:
  - (a) contain the correct PO Number;
  - (b) express the sum invoiced in sterling; and
  - (c) include VAT at the prevailing rate as a separate sum or a statement that the Supplier is not registered for VAT.
- 3.4 The Supplier shall submit invoices *[[each month] OR [insert other interval]]* to the Customer’s postal address.
- 3.5 The Supplier acknowledges that:
  - a) if the Supplier does not include VAT on an invoice or does not include VAT at the correct rate, the Customer will not be liable to pay the Supplier any additional VAT;
  - b) invoices which do not include the information set out in Clause 3.3 will be rejected.
- 3.6 Any late payment by the Customer of an undisputed Valid Invoice will be subject to interest at the rate of 3% above the base rate from time to time of NatWest Bank plc.

- 3.7 The Supplier shall not suspend provision of the Services if any payment is overdue.
- 3.8 The Supplier indemnifies the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract.

#### **4 Extension of the Contract**

- 4.1 The Customer may, by written notice to the Supplier, extend the Contract for a further period up to [*insert number of months or period*].

#### **5 Warranties and Representations**

- 5.1 The Supplier warrants and represents for the Contract Term that:
- (a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into the Contract and to provide the Services;
  - (b) the Contract is executed by a duly authorised representative of the Supplier;
  - (c) in entering the Contract it has not committed any Fraud;
  - (d) as at the Commencement Date, all information contained in its tender or other offer made by the Supplier to the Customer remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render such information false or misleading;
  - (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
  - (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;
  - (g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Supplier's assets or revenue;
  - (h) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and
  - (i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
  - (j) it will comply with its obligations under the Immigration, Asylum and Nationality Act 2006.

- 5.2 The Supplier warrants and represents that in the 3 years prior to the date of the Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance with generally accepted accounting principles and has complied with relevant securities;
  - (b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as a going concern or its ability to provide the Services; and
  - (c) it has complied with all relevant tax laws and regulations and no tax return submitted to a relevant tax authority has been found to be incorrect under any anti-abuse rules.

## **6 Service Standards**

- 6.1 The Supplier shall provide the Services or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice prevailing from time to time and with Staff who are appropriately trained and qualified.
- 6.2 If the Services do not meet the Specification, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the Specification within such reasonable time as may be specified by the Customer.
- 6.3 The Customer may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Customer of the Goods. If the Customer rejects any of the Goods it may (without prejudice to its other rights and remedies) either:
- (a) have the Goods promptly either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until the repair or replacement has occurred; or
  - (b) treat the Contract as discharged by the Supplier's breach and obtain a refund (if the Goods have already been paid for) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Customer in obtaining replacements.
- 6.4 The Customer will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with Clause 6.3.
- 6.5 If the Customer issues a receipt note for delivery of the Goods it shall not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Customer's acceptance of them.
- 6.6 The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is so specified, for 3 years from the date of acceptance. If the Authority shall within such guarantee period or within 30 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may

have) promptly remedy such defects (whether by repair or replacement as the Customer shall choose) free of charge.

- 6.7 Any Goods rejected or returned by the Customer pursuant to this Clause 6 shall be returned to the Supplier at the Supplier's risk and expense.

## **7 Termination**

- 7.1 The Customer may terminate the Contract at any time by giving 30 days written notice to the Supplier.

- 7.2 The Customer may terminate the Contract in whole or in part by notice to the Supplier with immediate effect and without compensation to the Supplier if:

- (a) being an individual, the Supplier is the subject of a bankruptcy order; has made a composition or arrangement with his creditors; dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
- (b) being a company, the Supplier goes into compulsory winding up, or passes a resolution for voluntary winding up, or suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets, is dissolved; or has entered into a voluntary arrangement with its creditors under the Insolvency Act 1986, or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985; or has been dissolved;
- (c) being a partnership, limited liability partnership or unregistered company, the Supplier or an individual member of it goes into compulsory winding up; is dissolved; suffers an administrator or receiver or manager to be appointed over the whole or any part of its assets; or has entered into a composition or voluntary arrangement with its creditors;
- (d) the Supplier is in any case affected by any similar occurrence to any of the above in any jurisdiction;
- (e) subject to Clause 7.3, the Supplier commits a Default;
- (f) there is a change of control of the Supplier; or
- (g) the Supplier or Staff commits Fraud in relation to the Contract or any other contract with the Crown (including the Customer).

- 7.3 If the Supplier commits a Default which is capable of being remedied, the Customer may terminate the Contract pursuant to Clause 7.2(e) only if the Supplier has failed to remedy the Default within 20 Working Days of being notified of the Default by the Customer.

## **8 Consequences of Expiry or Termination**

- 8.1 If the Customer terminates the Contract under Clause 7.2:

- (a) and then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other

arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Term; and

- (b) no further payments shall be payable by the Customer to the Supplier (for the Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under Clause 8.1(a).

8.2 On expiry or termination of the Contract the Supplier shall:

- (a) co-operate fully with the Customer to ensure an orderly migration of the Services to the Customer or, at the Customer's request, a Replacement Supplier; and
- (b) procure that all data and other material belonging to the Customer (and all media of any nature containing information and data belonging to the Customer or relating to the Services) shall be delivered promptly to the Customer.

8.3 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 3, 8 to 13, 17, 26 and 28.

## **9 Liability, Indemnity and Insurance**

9.1 Notwithstanding any other provision in the Contract, neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation; or
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Parts I and II of the Supply of Goods and Services Act 1982.

9.2 The Supplier shall indemnify and keep indemnified the Customer against all claims, proceedings, demands, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which arise in tort (including negligence) default or breach of the Contract to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or Fraud of itself or of Staff or Sub-contractors save to the extent that the same is directly caused by the negligence, breach of the Contract or applicable law by the Customer.

9.3 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

9.4 Subject to Clause 9.1:

- (a) neither Party is liable to the other for any:
  - (i) loss of profits, business, revenue or goodwill;
  - (ii) loss of savings (whether anticipated or otherwise); and/or
  - (iii) indirect or consequential loss or damage
- (b) each Party's total aggregate liability in respect of all claims, losses damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract, shall not exceed £1,000,000 (one million pounds) or 10x the value of the Contract whichever is the lower amount.

9.5 The Supplier shall, with effect from the Commencement Date and for such period as necessary to enable the Supplier to comply with its obligations under the Contract, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including employer's liability, death or personal injury, loss of or damage to property or any other loss, including financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Term and for a minimum of 6 years following the end of the Contract.

9.6 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

9.7 If the Supplier fails to comply with Clauses 9.5 and 9.6 the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

9.8 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

9.9 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **10 Confidentiality and Data Protection**

10.1 Subject to Clause 10.2, unless agreed otherwise in writing, the Supplier shall, and shall procure that Staff shall, keep confidential all matters relating to the Contract.

10.2 Clause 10.1 shall not apply to any disclosure of information:

- (a) required by any applicable law;

- (b) that is reasonably required by persons engaged by the Supplier in performing the Supplier's obligations under the Contract;
- (c) where the Supplier can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 10.1; or
- (d) which is already lawfully in the Supplier's possession prior to its disclosure by the Customer.

10.3 The Customer may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any central Government body for any proper purpose of the Customer or of the relevant central Government body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Customer for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement

10.4 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule [X] . The only processing that the Processor is authorised to do is listed in Schedule [X] by the Controller and may not be determined by the Processor.

10.5 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

10.6 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

10.7 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule [ X ], unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EUA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

10.8 Subject to clause 10.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

10.9 The Processor's obligation to notify under clause 10.8 shall include the provision of further information to the Controller in phases, as details become available.

10.10 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 10.8 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;

- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 10.11 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 10.13 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 10.14 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 10.15 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 10.16 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 10.17 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 10.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 10.19 Where the Parties include two or more Joint Controllers as identified in Schedule [X] in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement

based on the terms outlined in Schedule [Y] in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

## **11 Freedom of Information**

11.1 The Supplier acknowledges that the Customer is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the “**Information Acts**”) and may be required to disclose certain information to third parties including information relating to this Contract pursuant to the Information Acts.

11.2 If the Customer receives a request for information relating to the Contract pursuant to either of the Information Acts, the Customer may disclose such information as necessary in order to comply with its duties under the Information Acts.

## **12 Intellectual Property Rights**

12.1 The IP Materials shall vest in the Customer and the Supplier shall not, and shall procure that Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for the Supplier to provide the Services.

12.2 The Supplier shall indemnify and keep indemnified the Customer against all actions, claims, demands, losses, damages, costs and expenses and other liabilities which the Customer may suffer or incur arising from any infringement or alleged infringement of any Intellectual Property Rights by the availability of the Services except to the extent that they have been caused by or contributed to by the Customer’s acts or omissions.

## **13 Prevention of Corruption and Fraud**

13.1 The Supplier shall act within the provisions of the Bribery Act 2010.

13.2 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of money from the Customer.

13.3 The Supplier shall notify the Customer immediately if it has reason to suspect that Fraud has occurred, is occurring or is likely to occur.

## **14 Discrimination**

14.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

14.2 The Supplier shall notify the Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by Staff on the grounds of discrimination arising in connection with the Services.

## **15 Environmental and Ethical Policies**

15.1 The Supplier shall provide the Services in accordance with the Authority’s policies on the environment, sustainable and ethical procurement and timber and wood derived products, details of which are available on the Customer Website.

**16 Health and Safety**

- 16.1 Each Party will promptly notify the other Party of any health and safety hazards which may arise in connection with the Services.
- 16.2 While on the Customer's premises, the Supplier shall comply with the Customer's health and safety policies.
- 16.3 The Supplier shall notify the Customer immediately if any incident occurs in providing the Services on the Customer's premises which causes or may cause personal injury.
- 16.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1976, and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Customer's premises when providing the Services.
- 16.5 The Supplier's health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) shall be made available to the Customer on request.

**17 Monitoring and Audit**

- 17.1 The Customer may monitor the provision of the Services and the Supplier shall co-operate, and shall procure that Staff and any Sub-contractors co-operate, with the Customer in carrying out the monitoring at no additional charge to the Customer.
- 17.2 The Supplier shall keep and maintain until 6 years after the end of the Contract Term full and accurate records of the Contract including the Services supplied under it and all payments made by the Customer. The Supplier shall allow the Customer, the National Audit Office and the Comptroller and Auditor General reasonable access to those records and on such terms as they may request.
- 17.3 The Supplier agrees to provide, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

**18 Transfer and Sub-Contracting**

- 18.1 The Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval.
- 18.2 If the Supplier enters into any Sub-contract in connection with the Contract it shall:
- (a) remain responsible to the Customer for the performance of its obligations under the Contract;
  - (b) be responsible for the acts and/or omissions of its Sub-contractors as though they are its own;
  - (c) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Supplier complies with such terms;

(d) pay its Sub-contractors' undisputed invoices within 30 days of receipt.

18.3 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority or any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

(b) any private sector body which performs substantially any of the functions of the Customer.

18.4 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Customer.

## **19 Variation**

19.1 Subject to the provisions of this Clause 19, the Customer may change the Specification provided that such change is not a material change to the Specification (a "**Variation**").

19.2 The Customer may request a Variation by notifying the Supplier with sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement it. Variations agreed by the Parties shall be made in writing.

19.3 If the Supplier is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Customer may:

(a) allow the Supplier to fulfil its obligations under the Contract without the Variation; or

(b) refer the request to be dealt with under the Dispute Resolution Procedure.

## **20 Dispute Resolution**

20.1 The Parties shall attempt in good faith to resolve any dispute between them arising out of the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall include the escalation of the dispute to the Supplier's representative and the Customer's commercial director or equivalent.

20.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

20.3 If the dispute cannot be resolved by the Parties pursuant to Clause 20.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clauses 20.5 to 20.10.

20.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.

- 20.5 A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree a Mediator within 10 Working Days after a request by one Party or if the chosen Mediator is unable to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- 20.6 The Parties shall, within 10 Working Days of the appointment of the Mediator, meet the Mediator to agree a programme for the disclosure of information and the structure to be adopted for negotiations. The Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 20.7 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 20.8 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 20.9 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 20.10 If the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to the Courts.
- 20.11 Subject to Clause 20.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 20.1 and 20.5 to 20.10 have been completed.

## **21 Supplier’s Status**

- 21.1 Nothing in the Contract shall be construed as constituting a partnership between the Parties or as constituting either Party as the agent for the other for any purposes except as specified by the terms of the Contract.
- 21.2 The Supplier shall not (and shall ensure that Staff shall not) say or do anything that might lead any person to believe that the Supplier is acting as the agent, partner or employee of the Customer.

## **22 Notices**

- 22.1 Notices shall be in writing and in English and shall be deemed given if signed by or on behalf of a duly authorised officer of the Party giving the notice and if left at, or sent by first class mail to the address of the receiving Party as specified in the Contract (or as amended from time to time by notice in writing to the other Party).

## **23 Entire Agreement**

- 23.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, arrangements and undertakings.

## **24 Third Party Rights**

- 24.1 No term of the Contract is intended to confer a benefit on, or be enforceable by, any person who is not a Party other than the Crown.

## **25 Waiver**

- 25.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 25.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.
- 25.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **26 Publicity**

- 26.1 The Supplier shall not without Approval:
- (a) make any press announcements or publicise the Contract or its contents in any way; or
  - (b) use the Customer's name or logo in any promotion or marketing or announcement.
- 26.2 The Customer may publish the Contract on the Customer Website or another website at its discretion.

## **27 Force Majeure**

- 27.1 Except to the extent that the Supplier has not complied with any business continuity plan agreed with the Customer, neither Party shall be liable for any failure to perform its obligations under the Contract if, and to the extent, that the failure is caused by act of God, war, riots, acts of terrorism, fire, flood, storm or earthquake and any disaster but excluding any industrial dispute relating to the Supplier, Staff or Sub-contractors.
- 27.2 If there is an event of Force Majeure, the affected Party shall use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.

## **28 Governing Law and Jurisdiction**

- 28.1 The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the Courts of England and Wales.

- 28.2 The submission to such jurisdiction shall not limit the right of the Customer to take proceedings against the Supplier in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

**SCHEDULE 1****SPECIFICATION OF SERVICES**

*[insert description of the Services to be supplied, including where appropriate the Key Personnel, the Premises and the Quality Standards]*

**Use of Confidential Information by the Customer**

The Customer may disclose the Confidential Information of the Supplier:

- (g) on a confidential basis to any central Government body for any proper purpose of the Authority or of the relevant central Government body;
- (h) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (i) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (j) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Authority for any purpose relating to or connected with this Agreement;
- (k) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (l) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement

*[insert precedence clause followed by any special terms that may apply as appropriate]*

**SCHEDULE 2****PRICES**

*[insert pricing information inc and exc VAT (including the payment programme, payment mechanisms and the Price) due to the Supplier for the Services]*

**The Contract has been entered into on the date stated at the beginning of it.**

SIGNED for and on behalf of the  
**CUSTOMER**

SIGNED for and on behalf of the  
**SUPPLIER**

SIGNATURE.....

SIGNATURE.....

NAME .....

NAME.....

Position .....

Position.....